

135384

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

General Electric Company
One Lexan Lane
Mount Vernon, Indiana

Proceeding under Section 122 of
the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as
amended.

ADMINISTRATIVE ORDER
BY CONSENT RE: REMEDIAL
INVESTIGATION AND
FEASIBILITY STUDY

U.S. EPA Docket No.

INTRODUCTION

The United States Environmental Protection Agency ("U.S. EPA"), the Indiana Department of Environmental Management ("IDEM") and General Electric Company (hereinafter "Respondent" or "GE") have each agreed to the making and entry of this Administrative Order by Consent ("Consent Order").

I. JURISDICTION

A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"), and delegated to the Administrator of the U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Federal Register 2923, and further delegated to the Assistant

Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation No. 14-14-C on February 26, 1987, and further delegated by U.S. EPA, Region V, Delegation No. 14-14-C, to the Director, Waste Management Division on September 14, 1987.

B. The Respondent to this Consent Order agrees that it is bound by all of its terms and conditions.

C. Respondent admits and agrees not to contest (1) the U.S. EPA's or the IDEM's jurisdiction to issue and enforce this Order, or (2) the contractual nature of this Order. In agreeing to this Consent Order, the Respondent does not admit the allegations, determinations, and conclusions of law made by U.S. EPA and IDEM in this Consent Order, except with respect to U.S. EPA's and IDEM's jurisdiction to issue and enforce this Order. Additionally, the Respondent does not admit any fault or liability under CERCLA or any other statutory or common law. The Respondent, by signing this Consent Order, does not waive any rights it may have to assert claims under CERCLA against any other party. This Consent Order, except for purposes of the Order's enforcement, does not constitute an estoppel or waiver of any defenses the Respondent may have under CERCLA or any other statutory or common law. The Respondent has entered into this Consent Order in order to expedite effective remedial actions and

minimize litigation.

II. NOTICE OF ACTION

A. U.S. EPA has notified all Potentially Responsible Parties ("PRP's"), that it has identified as of the date of entry of this Consent Order of this action, and has provided them with the names and addresses of other PRP's, and with the U.S. EPA's estimate of the volume and nature of substances contributed by each of them to Bald Knob Landfill to the extent such information is available pursuant to Section 122(e) of CERCLA.

B. U.S. EPA has notified the Federal Natural Resource Trustee of this action pursuant to the requirements of Section 122(j) of CERCLA.

C. U.S. EPA has notified the State of Indiana of this action pursuant to the requirements of Section 121(f) of CERCLA.

III. PARTIES BOUND

A. This Consent Order applies to and binds the following persons as defined in Section 101(21) of CERCLA:

- (1) the U.S. EPA, through the Director, Waste Management Division, Region V;
- (2) the INEM, through the Commissioner; and
- (3) the following persons as defined in Section 101(21) of CERCLA, herein referred to as the "Respondent":
General Electric Company and its officers, directors, principals, employees, agents, successors and assignees.

B. The undersigned representatives of the U.S. EPA, the IDEM and the Respondent each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind such parties to this document.

C. No change in ownership, corporate, or partnership status shall in any way alter the status or responsibility of the Respondent under this Consent Order. The Respondent shall be responsible for carrying out all actions required of the Respondent by the terms and conditions of this Consent Order. Respondent shall be responsible for ensuring that their respective contractors, consultants, firms, officers, directors, principals and other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Order.

IV. STATEMENT OF PURPOSE

A. In entering into this Consent Order, the mutual objectives of the U.S. EPA, the IDEM and the Respondent are for the Respondent to:

- (1) conduct a phased remedial investigation (RI) to determine fully the nature and extent of the release or threatened release of hazardous substances, pollutants or contaminants from the Bald Knob Landfill, hereinafter the "Facility" and (2) if deemed necessary by U.S. EPA in

light of the PI findings, to perform a Feasibility Study (FS) to identify and evaluate alternatives for the appropriate extent of remedial action, if any, to prevent or mitigate the migration or the release or threatened release of hazardous substances from the facility; or the release or threatened release of pollutants or contaminants from the Facility which may present an imminent and substantial endangerment to public health, welfare or the environment.

R. The activities conducted pursuant to this Consent Order are subject to approval by the U.S. EPA, in consultation with IDEM, and as provided, shall employ sound scientific, engineering and construction practices and shall be consistent with the National Contingency Plan (NCP), 40 CFR § 300.68 et seq. as amended, and CERCLA.

V. U.S. EPA ALLEGATIONS

Based upon information available on the effective date of this Consent Order, the Regional Administrator of the U.S. EPA, Region V, makes the following allegations:

- A. The McCarty's Bald Knob Road (a.k.a County Road 200 West) Landfill ("Facility") occupies approximately 27.58 acres, of which only approximately 15 acres were reportedly used for landfilling, located in the NW corner of Section 14, Township 7 south, Range 14 west, Posey County, Indiana. The landfill is bounded on the north by undeveloped woodlands, to the east by cultivated fields, to the south by the Mt. Vernon City Police Pistol Range, and to the west by County Road 200 west and by two private residences.

- B. The Facility was used as a landfill for general refuse, chemical waste and industrial waste from December 1970 to the fall of 1979. The Facility was operated by Mr. Carl McCarty. The Facility accepted municipal wastes from the City of Mount Vernon from 1972 to 1979, and from GE from 1971 to 1978. The Facility accepted wastes from approximately eight sources. According to the U.S. EPA, Region V Potential Hazardous Waste Site Preliminary Assessment (April 19, 1983), GE was the primary industrial waste contributor to the Facility, disposing of industrial waste containing low concentrations of phenol during the period 1970 to 1978. The landfill ceased accepting wastes in the fall of 1979, and ceased operation in 1982.
- C. According to a March 1982 site investigation and closure design conducted by Atec Associates, Inc., a consulting firm hired by GE, three aquifers below the Facility were contaminated with phenol. An estimated 1,000 people obtain drinking water from wells tapping two aquifers within 3 miles of the Facility, according to the U.S. EPA, Region V Potential Hazardous Waste Site Preliminary Assessment of April 19, 1983.
- D. According to the EPA Potential Hazardous Waste Site Preliminary Assessment Report dated April 19, 1983, bis-phenol A, a chemical disposed of at the Facility was found at a level of 11.2 ppm in a drainage ditch along County Road 200 W (Raid Knob Road) near the site and at a concentration of 13.4 ppm in a leachate sample. In addition, bis(2-ethylhexyl) phthalate was found in two private wells near the site at 10 ug/l and 167 ug/l concentrations, based on sampling conducted by GE and analyzed by the Indiana State Board of Health.
- E. Based upon sample results from an investigation performed by Atec Associates, Inc. (March 1982), a consulting firm hired by GE, and other sampling, the U.S. EPA has determined that hazardous substances as defined in Section 101(14) of CERCLA, are located in the groundwater beneath the Facility and have been released to surface waters, including but not limited to the following:

<u>Hazardous Substance</u>	<u>Highest Conc.</u>	<u>Location</u>
Phenol	224 pph	monitoring well
bis-phenol A	13.4 ppm	surface water
bis(2-ethylhexyl)phthalate	167 ug/l	residential well

- F. According to the August 12, 1977, Indiana State Board of Health memorandum "Geologic Description and Evaluation of McCarty Sanitary Landfill", the flow of groundwater at the

site is toward the southwest. The Facility is located in the Wabash Lowlands physiographic (landform) division of the state which is characterized by a flat to gentle undulating land surface. The total thickness of soil cover over the bedrock ranges from 31 to 79 feet. Refuse depth within the landfill ranges from 0 to 25 feet.

- G. Based on results of both U.S. EPA and IDEM investigations, and taking into account such factors as populations at risk, the potential of hazardous substances being present, the potential for contamination of drinking water supplies and the potential for the destruction of sensitive ecosystems, the Facility is presently proposed on the National Priorities List (NPL) pursuant to Section 105 of CERCLA. GE filed objections to the proposed NPL listing. As of the effective date of this Consent Order, U.S. EPA has not yet made a decision as to whether the Facility will be finally placed on the NPL.

VI. U.S. EPA CONCLUSIONS OF LAW

Based upon information available on the effective date of this Consent Order, the Regional Administrator of the U.S. EPA, Region V, and the Director of the IDEM makes the following conclusions of law:

A. The McCarty's Bald Knob Landfill is a "facility" as defined in Section 101(9) of CERCLA.

B. Respondent is a "person" as defined in Section 101(21) of CERCLA.

C. From approximately 1971 to 1979 "hazardous substances" as defined in Section 101(14) of CERCLA have been deposited, stored, disposed of, or located at the Facility.

D. The spilling, leaking, leaching, dumping, or disposing of hazardous substances into the soils, groundwater,

and surface water adjacent to the site, and past, present and potential migration of hazardous substances from the site constitutes an actual and/or threatened "release" into the environment as that term is defined in Section 101(22) and used in Section 122 of CERCLA.

E. For the reasons set forth in Section V of this Consent Order, Respondent may be a liable person pursuant to Section 107 of CERCLA and is a potentially responsible party for the purposes of Section 122 of CERCLA for all costs of removal and remedial action incurred by the United States Government and the State of Indiana, not inconsistent with the NCP.

VII. DETERMINATIONS

Based on the foregoing U.S. EPA Allegations and Conclusions of Law, the Director of the Waste Management Division of U.S. EPA, Region V, and the Commissioner of the IDEM, have determined that:

A. The Respondent will promptly and properly take appropriate response action at the Facility by conducting a Remedial Investigation (RI) and, if deemed necessary by the U.S. EPA, a Feasibility Study (FS), and are qualified to perform the RI/FS; and,

B. The actions required by this Consent Order are in the public interest and are consistent with the NCP and with CERCLA.

VIII. WORK TO BE PERFORMED

A. All work to be performed by the Respondent pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or certified geologist. Prior to the initiation of work at the Facility, the Respondent shall notify the U.S. EPA and the IDEM, in writing, of the name, title, and qualifications of the proposed engineer or geologist, and of the names of principal contractors and/or subcontractors proposed to be used in carrying out the work to be performed pursuant to this Consent Order.

B. Attachment I to this Consent Order provides a Scope of Work ("RI/FS SOW") for the completion of a full RI/FS which is incorporated into and made a part of this Consent Order. In the event of any conflict between any provisions of this Consent Order and the RI/FS SOW, the Consent Order shall control in resolving such conflict.

C. The RI/FS will be performed in separate phases. These separate activities include the Phase I remedial investigation and, if deemed necessary by the U.S. EPA, in consultation with the IDEM, additional remedial investigation phases and an FS. Execution of each phase of work in the RI/FS process will be preceded by the development and approval of a detailed work plan ("RI/FS Work Plan(s)").

D. The following work shall be performed:

1. Within 90 calendar days of the effective date of this Consent Order, the Respondent shall submit a work plan to the U.S. EPA and IDEM for Phase I of a Remedial Investigation ("Phase I RI Work Plan"). The Phase I RI Work Plan and all subsequent RI/FS Work Plans shall be developed in conformance with the RI/FS SOW, the standards set forth in Section 121 of CERCLA, U.S. EPA "Draft Guidance on Remedial Investigations/Feasibility Studies Under CERCLA", dated March 1988, as amended (the "RI/FS Guidance") and any additional guidance documents provided by U.S. EPA which are not inconsistent with the MCP.

Any subsequent RI/FS Work Plan(s) required after Phase I of the RI shall be submitted to the U.S. EPA and IDEM within 60 calendar days from the date of such request to the Respondent.

2. The RI/FS Work Plan(s) submittal shall include, but not be limited to, the following project plans: (1) a Sampling Plan; (2) a Health and Safety Plan; (3) a plan for satisfaction of permitting requirements; (4) a Quality Assurance Project Plan (QAPP); (5) provisions for the preparation of an Endangerment Assessment Plan; and (6) a schedule for implementation of RI/FS tasks and submission of RI/FS reports. The RI/FS Work Plan(s) shall provide, at a minimum, for the submittal of a preliminary and final Remedial Investigation Report, to be prepared in accordance with the RI Guidance, and if deemed necessary by

U.S. EPA, a preliminary and final FS Report, to be prepared in accordance with the FS Guidance.

3. The RI/FS Work Plan(s) shall be subject to review, modification and approval or disapproval by the U.S. EPA in consultation with the IDEM.

4. Within 75 calendar days of receipt of any RI/FS Work Plan, the U.S. EPA Project Coordinator shall notify the Respondent, in writing, of approval or disapproval of the RI/FS Work Plan, or any part thereof. In the event that a longer review period is required, the U.S. EPA Project Coordinator shall notify the Respondent of that fact within 30 calendar days of receipt of the RI/FS Work Plan. In the event of any disapproval, the U.S. EPA shall specify, in writing, any deficiencies and required modifications to the RI/FS Work Plan(s).

5. Within 30 calendar days of receipt of any U.S. EPA RI/FS Work Plan disapproval, the Respondent shall submit a revised RI/FS Work Plan to the U.S. EPA and the IDEM which incorporates the modifications required by the U.S. EPA.

6. In the event of subsequent U.S. EPA disapproval of a modified RI/FS Work Plan, the U.S. EPA retains the right to conduct a complete RI/FS and/or to enforce the terms of this Consent Order.

7. The Respondent shall promptly implement the work detailed in the RI/FS Work Plan(s), if and when, the RI/FS Work Plan(s) is(are) fully approved by the U.S. EPA. Unless otherwise

directed by U.S. EPA, the Respondent shall not commence field activities until approval by the U.S. EPA of the RI/FS Work Plan(s). This paragraph shall not preclude continuation of presently on-going activities at the site. However, results of these activities will not be creditable to the RI/FS unless such activity complies with this agreement and the RI/FS. The fully approved RI/FS Work Plan(s) shall be deemed incorporated into and made an enforceable part of this Consent Order. In order to assure that the RI/FS is conducted in full compliance with CERCLA, the Work Plan(s) shall conform with all relevant portions of CERCLA, including but not limited to, Section 121 of SARA ("clean-up standards"). All work shall be conducted in accordance with CERCLA, the NCP, the RI Guidance and the FS Guidance and the requirements of this Consent Order, including the standards, specifications and schedules contained in the RI/FS Work Plan(s).

IX. PLANS AND REPORTS

A. The Respondent shall provide a preliminary and final Remedial Investigation Report and, if deemed necessary by U.S. EPA, a Feasibility Study Report and any other plans or reports required by the RI/FS Work Plan(s) to the U.S. EPA and the IDEM according to the schedule(s) contained in the RI/FS Work Plan(s).

B. The U.S. EPA and the IDEM shall review and the U.S. EPA shall approve the preliminary and final Remedial Investigation Report, the preliminary and final Feasibility Study

Report and any other preliminary or final plans or reports specified in the RI/FS Work Plan(s) as requiring U.S. EPA approval.

C. If the U.S. EPA, in consultation with the IDEM, disapproves any preliminary or final plan or report, the U.S. EPA shall specify, in writing, any deficiencies and required modifications and the Respondent shall submit a revised plan or report which shall incorporate any U.S. EPA modifications or additions to the U.S. EPA within 45 days or such longer period as the U.S. EPA Project Coordinator may establish.

D. In the event of subsequent disapproval of any revised plan or report, the U.S. EPA retains the right to perform additional studies, to conduct a complete or partial RI/FS, and/or to enforce the terms of this Consent Order.

E. The Respondent shall provide monthly written progress reports to the U.S. EPA and the IDEM according to the schedule(s) contained in the RI/FS Work Plan(s). At a minimum, these monthly written progress reports shall include the following:

1. A description of the action which has been taken toward achieving compliance with this Consent Order;
2. All results of sampling and tests and all other raw data produced during the month and relating to the Facility;
3. All plans and procedures completed during the past month, as well as such actions, data, and plans which are scheduled for the next month; and,

4. Target completion dates for each element of activity and an explanation of any deviation from the schedules in the RI/FS Work Plan(s).

F. The monthly written progress reports shall be submitted to the U.S. EPA and the IDEM by the fifth business day of each month following the date of commencement of the work detailed in the RI/FS Work Plan(s).

X. ADDRESS FOR ALL CORRESPONDENCE

Documents, including reports, approvals, disapprovals and other correspondences to be submitted pursuant to this Consent Order shall be sent by certified mail to the following addresses, or to such other addresses as the Respondent, the IDEM or the U.S. EPA may hereafter designate in writing:

- A. Documents to be submitted to the U.S. EPA should be sent to: (5 copies)

George E. Addison
Remedial Project Manager
Remedial Enforcement Response Branch (5HS-11)
U.S. Environmental Protection Agency
Region V, 230 S. Dearborn Street
Chicago, Illinois 60604

- R. Documents to be submitted to the IDEM should be sent to: (3 copies)

Glenn Pratt
Indiana Department of Environmental Management
105 Meridian Street
Indianapolis, Indiana 46225

- C. Documents to be submitted to the Respondent should be sent to:

Manager Environmental and Safety
General Electric Company
Highway 69, South
Mount Vernon, Indiana 47620

XI. ADDITIONAL WORK

A. In the event that the U.S. EPA, in consultation with the IDEM or the Respondent determines that additional work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of the RI/FS, notification of such additional work shall be provided to each of the other parties.

B. Any additional work determined to be necessary by the Respondent shall be subject to approval by the U.S. EPA, in consultation with the IDEM.

C. Any additional work determined to be necessary by the Respondent and approved by the U.S. EPA, or determined to be necessary by the U.S. EPA in consultation with the IDEM, shall be completed by Respondent in accordance with the standards, specifications, and schedule determined or approved by the U.S. EPA in consultation with the IDEM.

XII. COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the Respondent pursuant to this Consent Order shall be performed in compliance with all applicable Federal and State laws and regulations including, but not limited to, all Occupational Health and Safety Administration and Department of Transportation regulations. The Respondent shall be responsible for obtaining all State or local permits which are necessary for the performance of any work hereunder.

XIII. ACCESS

A. To the extent that the Facility or other areas where work is to be performed hereunder is presently owned by parties other than those bound by this Consent Order, the Respondent shall obtain, or shall use their best efforts to obtain, access agreements from the present owners within thirty (30) calendar days of approval of the RI/FS Work Plan(s). Such agreements shall provide access for the U.S. EPA, the IDEM and authorized representatives of the U.S. EPA and the IDEM, as specified below. In the event that such access agreements cannot be obtained within the time referenced above, the Respondent shall so notify the U.S. EPA and the IDEM. The U.S. EPA shall then proceed to use its best efforts to obtain access to the respective properties so that Respondent is able to implement the terms of this Order consistent with the U.S. EPA document dated June 5, 1987 entitled "Entry and Continued Access under CERCLA" as revised. The U.S. EPA, in consultation with the IDEM, may agree to extend all time periods herein and in the Work Plan(s) for a period equal to the time period taken to gain access by the parties.

The U.S. EPA reserves the right to terminate this Consent Order should the parties' inability to gain access to the Facility, or other areas, materially affect the Respondent's ability to perform the work required herein.

B. Authorized representatives of the U.S. EPA and the IDEM shall be allowed access to the Facility and other areas by the

Respondent, and as part of any agreement obtained under Paragraph A above, for purposes including, but not limited to: inspecting records, operating logs and contracts related to the Facility; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests, inspections, and sampling as the U.S. EPA, in consultation with the IDEM, may deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to the U.S. EPA and the IDEM by the Respondent hereunder. The Respondent shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertains to this Consent Order, subject to Paragraph C of Section XV of this Consent Order. All persons with access to the Facility pursuant to the Consent Order shall comply with approved health and safety plans.

C. Nothing herein shall be construed as restricting the inspection or access authority of the U.S. EPA or the IDEM under any law or regulation.

XIV. PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, the U.S. EPA, the IDEM and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The U.S. EPA Project Coordinator will be the U.S. EPA

designated representative at the Facility. To the maximum extent possible, communications between the Respondent, the IDEM and the U.S. EPA, and all documents, reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators. Each Project Coordinator shall be responsible for assuring that all communications received from the other Project Coordinators are appropriately disseminated and processed. During implementation of the RI/FS Work Plan(s), the Project Coordinators shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues.

B. The U.S. EPA, the IDEM and the Respondent shall each have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least ten (10) calendar days prior to the change.

C. The U.S. EPA Project Coordinator shall have at least the authority to: (1) take samples or direct the type, quantity and location of samples to be taken by the Respondent; (2) direct that work stop whenever they determine that activities at the facility may create a present danger to public health or welfare or to the environment; (3) observe, take photographs and make such other reports on the progress of the work as the

Project Coordinator deems appropriate; and (4) review records, files and documents relevant to the Consent Order.

D. The U.S. EPA Project Coordinator shall have, at least, the authority vested in an On-Scene Coordinator and a Remedial Project Manager (OSC, RPM) by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Consent Order, or to direct any response action undertaken by the U.S. EPA when conditions at the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment. In the event that the U.S. EPA Project Coordinator halts work pursuant to this paragraph, the Respondents may request a modification of the schedule or work described in the RI/FS Work Plan(s) and this Consent Order.

E. The absence of the U.S. EPA or IDEM Project Coordinator from the Facility shall not be cause for stoppage of work.

F. To the greatest extent possible, the Respondent's Project Coordinator shall be on-site during all hours of site work. In the event that Respondent's Project Coordinator is unable to be physically present on site for any period of time, he or she shall designate a substitute Project Coordinator who shall remain on site during all such periods of the Project Coordinator's absence.

XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Respondent shall make the results of all sampling and/or tests or other data generated by the Respondent, or on behalf of the Respondent, pursuant to implementation of this Consent Order, available to the U.S. EPA and the IDEM, and shall submit these results in written monthly progress reports as required by Section IX of this Consent Order.

B. At the request of the U.S. EPA or the IDEM, the Respondent shall provide split or duplicate samples to the U.S. EPA or the IDEM of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify the U.S. EPA and the IDEM at least five (5) calendar days in advance of any sample collection activity.

C. Pursuant to applicable Federal laws and regulations, (Section 104(e) of CERCLA and 40 CFR Part 2), the Respondent may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to the terms of this Consent Order. Such an assertion must be adequately substantiated when the assertion is made. Analytical data and other information described in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. Information determined to be confidential by the U.S. EPA in accordance with applicable federal laws and regulations will be afforded the full protection provided by such laws and regulations. Information determined to be confidential by IDEM

pursuant to applicable state laws and regulations will be afforded the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to the U.S. EPA and the IDEM, or if information claimed as confidential is determined by the U.S. EPA or the IDEM not to be confidential, the information may be made available to the public by the U.S. EPA or the IDEM.

XVI. QUALITY ASSURANCE

A. The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" OAMS-005-80 (U.S. EPA, 1980) throughout all data collection activities.

B. The Respondent shall consult with the U.S. EPA and IDEM Project Coordinators in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan(s). In order to provide quality assurance and maintain quality control with respect to all samples collected pursuant to this Consent Order, the Respondent shall:

1. Ensure that the U.S. EPA and IDEM personnel and/or the U.S. EPA and IDEM authorized representatives are allowed access to any laboratories and personnel utilized by the Respondent for analyses;

2. Ensure that all sampling and analyses are performed according to U.S. EPA methods or other methods deemed satisfactory by the U.S. EPA; and

3. Ensure that any laboratories utilized by the Respondent for analyses, participate in a U.S. EPA quality assurance/quality control program equivalent to that which is followed by the U.S. EPA, and which is consistent with U.S. EPA document OAMS-005-80. As part of such a program, and upon request by the U.S. EPA, such laboratories shall perform analyses of samples provided by the U.S. EPA or the IDEM to demonstrate the quality of analytical data for each such laboratory.

XVII. FORCE MAJEURE

A. The Respondent shall cause all work to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a "force majeure" is an event wholly beyond the control of the Respondent (including delays caused by floods, fires, acts of war and acts of God) which delays performance of any obligations required by this Consent Order. Increases of costs shall not be considered circumstances beyond the control of the Respondent.

B. If circumstances occur which may likely delay the achievement of any of the requirements of this Order because of a force majeure event, the Respondent shall immediately notify U.S. EPA and IDEM orally. In addition, the Respondent shall notify the U.S. EPA and the IDEM in writing no later than seven (7) calendar days after any event which the Respondent contends is a force majeure. Such notification shall describe the

anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondent to minimize the delay, and the timetable by which these measures will be implemented. Respondent's failure to give either immediate oral, or written notice within seven (7) calendar days, after the event, waives Respondent's rights to assert a force majeure claim. The Respondent shall have the burden of demonstrating that the event is a force majeure.

C. If the U.S. EPA, in consultation with the IDEM, agrees that a delay is attributable to a force majeure, the time period for performance under this Consent Order shall be extended pursuant to Section XXVII below for a period not to exceed the time period attributable to the event constituting the force majeure.

XVIII. STIPULATED PENALTIES

A. At the discretion of U.S. EPA, the Respondent shall be liable for payment into the Hazardous Substances Response Trust Fund administered by the U.S. EPA of the sums set forth below as stipulated penalties for each week or part thereof that the Respondent fails to submit a report or document or comply with a schedule in accordance with the requirements contained in this Consent Order, unless U.S. EPA determines that such delay is attributable to a force majeure as defined in Section XVII above. Such sums shall be due and payable within fifteen (15) days of receipt of notification from the U.S. EPA assessing the

penalties. These stipulated penalties shall accrue in the amount of \$1,000.00 for the first week or part thereof, and \$2,000.00 for the each week or part thereof thereafter.

R. The stipulated penalties set forth in paragraph A of this Section shall not preclude the U.S. EPA from electing to pursue any other remedy or sanction because of the Respondent's failure to comply with any of the terms of this Consent Order, including a suit to enforce the terms of this Consent Order. Said stipulated penalties shall not preclude the U.S. EPA from seeking statutory penalties up to the amount authorized by law in the event of Respondent's failure to comply with any requirements of this Consent Order.

C. The U.S. EPA may collect interest on any amount overdue under the terms of this Consent Agreement at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717. A late payment handling charge of twenty dollars (\$20.00) will be imposed on any late payment, with an additional charge of ten dollars (\$10.00) for each subsequent thirty (30) day period over which an unpaid balance remains. In addition, a six percent per annum penalty will be applied on any principal amount not paid within ninety (90) days of the date on which each payment is due.

D. Payment of sums due under this Section XVIII shall be remitted to: U.S. EPA, Region 5, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. Copies of all payments

shall be provided, concurrent with payment, to the U.S. EPA Project Coordinator and to: U.S. EPA, Region 5, SWER Branch, Attention: Ms. Isalee Coleman, Office of Regional Counsel, 5CS-TUR-3, 230 S. Dearborn Street, Chicago, Illinois 60604.

XIX. DISPUTE RESOLUTION

A. The parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Consent Order which the parties are unable to resolve informally, the Respondent shall present a written notice of such dispute to the U.S. EPA and the IDEM, which shall set forth specific points of dispute, the position of the Respondent and the technical basis therefor, and any actions which the Respondent considers necessary.

B. Within ten (10) calendar days of receipt of such a written notice, the U.S. EPA shall provide a written response to the Respondent setting forth its position and the basis therefor. During the five (5) business days following receipt of the response, the U.S. EPA, in consultation with the IDEM and the Respondent, shall attempt to negotiate in good faith a resolution of their differences.

C. Following the expiration of the time periods described in Paragraph B above, if the U.S. EPA concurs with the position of the Respondent, the Respondent and the IDEM shall be so

notified in writing and this Consent Order shall be modified to include any necessary extensions of time or variances of work. If the U.S. EPA does not concur with the position of the Respondent, the U.S. EPA shall resolve the dispute, based upon and consistent with the terms of this Consent Order, and shall provide written notification of such resolution to the Respondent and the IDEM.

D. The pendency of dispute resolution as set forth in this Section shall not affect the time period for completion of work and/or obligations to be performed under this Consent Order, except as to work and/or obligations which are the matter of, or affected by the dispute, and except that upon mutual agreement of the U.S. EPA and Respondent, any time period may be extended not to exceed the actual time taken to resolve the dispute. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the RI/FS Work Plan(s). The parties may agree to extensions for any time period set forth herein.

E. Upon resolution of any dispute, whether informally or using the procedures in this Section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure and into this Consent Order, pursuant to Section XXVII below. The Respondent shall proceed with all remaining work according to the modified plan or procedure.

F. In any proceeding to enforce the terms of this Consent Order or to collect penalties for violations thereof, the Respondent may defend on the basis that U.S. EPA's resolution of any properly invoked dispute was arbitrary, capricious or not otherwise in accordance with applicable law.

XX. COMMUNITY RELATIONS AND PUBLIC COMMENT

The Respondent shall cooperate with the U.S. EPA and the IDEM in providing RI/FS information to the public. As requested by the U.S. EPA or the IDEM, the Respondent shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by the U.S. EPA or the IDEM to explain activities at or concerning the Facility, including the findings of the RI/FS.

XXI. RECORD PRESERVATION

The Respondent agrees to preserve, during the pendency of this Consent Order, and for a minimum of ten (10) years after termination of this Consent Order, all records and documents in the possession of the Respondent, or in the possession of any division, employees, agents, accountants, contractors, or attorneys of the Respondent, which relate in any way to the Facility, despite any document retention policy to the contrary. Upon request by the U.S. EPA or the IDEM, the Respondent shall

make available to the U.S. EPA or the IDEM such records, or copies of any such records, subject to Paragraph C of Section XV of this Consent Order. After expiration of the ten (10) year retention period, if the Respondent intends to destroy any documents covered by this Section, the Respondent shall give U.S. EPA written notice of such intent at least thirty (30) days prior to such planned destruction to the addressee identified in Section X above, and to: Branch Chief, Solid Waste and Emergency Response Branch, Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

XXII. CERCLA FUNDING

A. The Respondent waives any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA, as amended, against the United States or the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA for, or arising out of, any activity performed or expenses incurred pursuant to this Consent Order.

B. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XXIII. RESERVATION OF RIGHTS AND RELEASE OF RESPONSIBILITIES

A. Except as otherwise provided herein, the U.S. EPA, the IDEM and the Respondent to this agreement, reserve all rights, and defenses that they may have regarding this matter.

R. Nothing herein shall waive the right of the U.S. EPA to enforce this Consent Order, or to take action pursuant to Sections 104, 106(a) and 107 of CERCLA or to take any other action pursuant to any other available legal authority. The U.S. EPA and the IDEM reserve the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages. In addition, the U.S. EPA reserves the right to undertake any Remedial Investigation/Feasibility Study work, and/or any removal, remedial and/or response actions relating to the Facility, and to seek recovery from the Respondent for any costs incurred in undertaking such actions.

C. Nothing herein shall be construed to release the Respondent from any liability for failure of the Respondent to perform the RI/FS in accordance with the Consent Order, including the SOW attached hereto and incorporated herein or with the RI/FS Work Plan(s) to be attached hereto and incorporated herein. The parties further expressly recognize that this Consent Order and the successful completion and approval of the RI/FS does not constitute waiver, satisfaction, release, or covenant not to sue, of any claim of the United States or the State of Indiana against the Respondent relating to the Facility to require Respondent to undertake further response actions and claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA except that, upon receipt of written

notice of satisfaction as provided in Section XXVIII of this Consent Order, Respondent shall have no further obligations under this Consent Order.

D. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation not a party to this Consent Order, for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous wastes, contaminants, or pollutants at, to, or from the Facility. The parties to this Consent Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Consent Order, and as to each other for matters not covered hereby.

E. The U.S. EPA and the IDEN recognize that the Respondent may have the right to seek contribution, indemnity and/or any other available remedy against any person not a party to this Consent Order found to be responsible or liable for contributions, indemnity or otherwise for any amounts which have been or will be expended by the Respondent in connection with the Facility.

F. Nothing in this Consent Order shall be construed as an admission of law or fact by the Respondent and none of the

Allegations, Determinations, Conclusion of Law, or other matters contained herein, or this Consent Order itself, may be used in any fashion or admitted into evidence in any proceeding against the Respondent other than a proceeding to enforce the terms of this Consent Order and in such proceeding only for the purposes of enforcing this Consent Order.

G. Nothing herein is intended to be a release or settlement of any claim for personal injury or property damage by any person not a party to this Consent Order.

XXIV. REIMBURSEMENT OF COSTS

A. Within 90 days, or a longer period if necessary, of the end of each twelve (12) month period beginning with the effective date of this Consent Order, the U.S. EPA and the IDEM shall submit an accounting to the Respondent of any costs incurred by the U.S. EPA and the IDEM under, or in connection with the oversight contract or arrangement in having a qualified person oversee the conduct of the RI/FS pursuant to Section 104(a) of CERCLA. Within sixty (60) calendar days of receipt of each such tabulation, the Respondent shall remit a check to the U.S. EPA and IDEM for the full amount of their respective costs.

B. Payment to the U.S. EPA for any costs incurred by the U.S. EPA under, or in connection with the oversight contract or arrangement shall be made to the order of the Hazardous Sub-

stance Response Trust Fund and forwarded to the U.S. EPA, Region 5, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. All checks shall conspicuously indicate the site identification number: IND980500417. Copies of all payments to the U.S. EPA shall be provided at the time of such payments to the U.S. EPA Project Coordinator and to: U.S. EPA, Region V, SWER Branch, Attention: Ms. Isalee Coleman, Office of Regional Counsel, 5CS-TUR-3, 230 S. Dearborn Street, Chicago, Illinois 60604.

C. Payment to the IDEM for response and oversight costs incurred by the IDEM shall be payable to the Indiana Department of Environmental Management and forwarded to: IDEM, 105 South Meridian Street, Indianapolis, Indiana, 46225. A copy of the transmittal letter and check shall be sent to the IDEM Project Coordinator.

D. The U.S. EPA and IDEM reserve the right to decide to bring and subsequently to pursue action against the Respondent pursuant to Section 107 of CERCLA for recovery of all response costs, including all response costs incurred prior to the effective date of this Consent Order, and all oversight costs incurred by the United States and IDEM related to this Consent Order, as well as any other past and future costs incurred by the United States and IDEM in connection with response activities conducted pursuant to CERCLA at the Facility.

XXV. INDEMNIFICATION OF THE UNITED STATES

A. The Respondent agrees to indemnify and save and hold the United States Government and the State of Indiana, their agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondent, their officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order.

B. Neither the U.S. EPA nor the IDEM is a party to any contract involving the Respondent at the Facility.

XXVI. PUBLIC COMMENT AND EFFECTIVE DATE

Within fifteen (15) calendar days or longer if necessary, of the date of the execution of this Consent Order, the U.S. EPA shall announce the availability of this Consent Order to the public for review and comment. The U.S. EPA shall accept comments from the public for, at a minimum, a thirty (30) calendar day period after such announcement. At the end of the comment period, the U.S. EPA, in consultation with the IDEM, shall review all such comments and shall either:

- a) determine that the Consent Order should be made effective, in which case the U.S. EPA shall so notify the Respondent in writing, and the Consent Order shall become effective on the date the Respondent receives such notification; or

- b) determine that modification of the Consent Order is necessary, in which case the U.S. EPA will inform the Respondent as to the nature of all the modifications, the Consent Order shall be so modified and shall become effective upon signature of the U.S. EPA.

In the event that the Respondent does not agree to modifications required by the U.S. EPA as a result of public comment, this Consent Order may be withdrawn by the U.S. EPA. In such an event, the U.S. EPA and the IDEM reserve all rights to take such actions as they deem necessary.

XXVII. SUBSEQUENT AMENDMENT

This Consent Order may be amended by mutual agreement of the U.S. EPA, the IDEM and the Respondent. Any amendment of this Consent Order shall be in writing, signed by the U.S. EPA, the IDEM and Respondent and shall have as the effective date, that date on which such amendment is signed by the U.S. EPA.

XXVIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon receipt by the Respondent of written notice from the U.S. EPA, that the Respondent has demonstrated that all of the terms of this Consent Order, including any additional work, modifications or amendments, have been completed in accordance with the terms hereof to the satisfaction of the

U.S. EPA in consultation with the IDEM. Upon such satisfaction, the Respondent hereto shall have no further liabilities or obligation to U.S. EPA regarding this RI/FS Consent Order. Upon such demonstration by the Respondent, said written notice shall not be unreasonably withheld or delayed.

XXIX. COVENANT NOT TO SUE

Upon termination of this Consent Order pursuant to the provisions of Section XXVIII and, payments and reimbursement to U.S. EPA and IDEM as provided in Section XVIII and XXIV of this Order, U.S. EPA covenants not to sue the Respondent or any employee, official, or agent thereof, to this agreement for work satisfactorily performed and payments made by the Respondent pursuant to this Consent Order. Nothing herein shall be deemed to grant any rights to persons not a party to this Consent Order, and U.S. EPA and IDEM reserve all rights against any such persons.

IT IS SO AGREED:

BY: Brian J. Dery March 29, 1989
Site General Manager Date
General Electric Company

APPROVED AS TO FORM AND LEGALITY:

Linley E. Pearson
Attorney General of the State of Indiana

BY: Mathew S. Scherschel April 21, 1989
Mathew S. Scherschel Date
Deputy Attorney General

BY: James W. Roush, ACTING April 21, 1989
Commissioner of Indiana Department Date
of Environmental Management

IT IS SO ORDERED AND AGREED:

BY: Norman Fredenburg 5/4/89
for Director, Waste Management Date
Division
U.S. Environmental Protection
Agency
Region V

EFFECTIVE DATE: 22 JUL 1989